

CONTRACT #2
RFS # 344.01-11656
FA # 06-16708-00

Finance & Administration
Division of Intellectual
Disabilities Services (DIDS)

VENDOR:
Behavior Science Consulting,
PLLC



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF MENTAL RETARDATION SERVICES
ANDREW JACKSON BUILDING
500 DEADERICK STREET, SUITE 1500
NASHVILLE, TENNESSEE 37243

RECEIVED

OCT 19 2009

FISCAL REVIEW

email copy on 10/16/09

October 19, 2009

Jim White, Director
Fiscal Review Committee
8th Floor, Rachel Jackson Building
Nashville, Tennessee 37243

Attention: Leni Chick

Re: Behavior Science Consulting, Inc.
Contract Number FA-06-16708-00
Request Amendment Review

Dear Mr. White:

The Division of Intellectual Disabilities Services (DIDS) is submitting proposed Amendment 3 to Contract # FA-06-16708-00 with Behavior Science Consulting, Inc. for review in accordance with requirements of the Fiscal Review Committee announced on September 18, 2008.

The contract was awarded through the State's RFP process and began on January 1, 2006.

The proposed amendment, Amendment 3, increases funding and adds two additional clauses that are currently required in all fee for service contracts that address illegal immigrants and the voluntary buyout program. The two prior amendments were for increasing funding.

A copy of the proposed amendment along with a copy of the base contract, prior amendments, and the "Supplemental Documentation Required for Fiscal Review Committee" form are enclosed. Please let me know if any additional information is required.

Your assistance for review of this proposed amendment is appreciated.

Sincerely,

Debra K. Payne
Interim Deputy Commissioner

DKP:FWH:dd

Enclosures

**Supplemental Documentation Required for
Fiscal Review Committee**

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FISCAL REVIEW

*Contact Name:	Fred Hix, Assistant Commissioner	*Contact Phone:	253-6710
*Contract Number:	FA-06-16708-00	*RFS Number:	34401-11656
*Original Contract Begin Date:	January 1, 2006	*Current End Date:	December 31, 2010
Current Request Amendment Number: <i>(if applicable)</i>	3		
Proposed Amendment Effective Date: <i>(if applicable)</i>	January 2, 2010		
*Department Submitting:	Finance and Administration		
*Division:	Division of Intellectual Disabilities Services		
*Date Submitted:	October 19, 2009		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	Behavior Science Consulting, PLLC		
*Current Maximum Liability:	\$238,300.00		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2006	FY: 2007	FY: 2008	FY: 2009
\$ 5,600.00	\$61,640.00	\$68,000.00	\$66,200.00
		FY: 2010	FY: 2011
		\$18,760.00	\$18,100.00
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY: 2006	FY: 2007	FY: 2008	FY: 2009
\$ 5,600.00	\$44,200.00	\$59,070.00	\$60,330.00
		FY: 2010	FY: 2011
		0.00	
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		n/a	
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		n/a	
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		This is a very specialized service that requires very restricted qualifications and specialized training that limits any other alternatives.	
*Contract Funding Source/Amount:	State:	\$238,300.00	Federal:
			0.00
Interdepartmental:		\$0.00	Other:
			\$0.00

3.10.09

Supplemental Documentation Required for Fiscal Review Committee

If "other" please define:		N/A	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
6/22/07		Summary Sheet Change to reallocate funding within the contract term.	
6/3/08		Increase maximum liability amount	
9/25/08		Increase maximum liability amount	
Method of Original Award: <i>(if applicable)</i>		RFP	
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>		Attached	
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>		n/a	
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>		n/a	

Contract Expenditures

FY 06 Contract Utilization Billing Period	Invoice Amount	FY 07 Contract Utilization Billing Period	Invoice Amount	FY 08 Contract Utilization Billing Period	Invoice Amount	FY 09 Contract Utilization Billing Period	Invoice Amount	FY 10 Contract Utilization Billing Period	Invoice Amount	FY 11 Contract Utilization Billing Period	Invoice Amount
FY 06		FY07		FY 08		FY 09		FY10		FY11	
								Contract has not billed for current year services			
5/18/2006	800.00	8/7/2006	3,200.00	1/23/2008	2,200.00	8/11/2008	2,330.00				
6/7/2006	4,800.00	11/16/2006	6,360.00	1/23/2008	13,200.00	6/5/2008	4,970.00				
		11/16/2006	5,680.00	3/13/2008	4,800.00	7/28/2008	1,400.00				
		2/21/2007	5,160.00	3/13/2008	2,640.00	10/1/2008	5,720.00				
		2/21/2007	8,120.00	3/13/2008	1,600.00	10/1/2008	5,280.00				
		3/6/2007	9,520.00	3/13/2008	8,640.00	10/1/2008	8,690.00				
		6/30/2007	1,320.00	6/9/2009	3,680.00	10/3/2008	3,090.00				
		6/30/2007	2,720.00	6/6/2009	12,950.00	12/22/2008	5,280.00				
		6/30/2007	2,120.00	6/9/2008	3,200.00	12/22/2008	1,760.00				
				6/9/2008	6,160.00	12/22/2008	4,760.00				
						2/17/2008	4,760.00				
						2/19/2009	3,880.00				
						4/13/2009	5,600.00				
						5/21/2009	2,810.00				

FY 06	\$5,600.00	FY 07	\$44,200.00	FY 08	\$59,070.00	FY 09	\$60,330.00	FY 10	\$68,000.00	FY 11	\$34,000.00
TOTAL		TOTAL		TOTAL		TOTAL		Anticipated Expenditures	Anticipated Expenditures	Anticipated Expenditures	

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OCT 19 2009
FISCAL REVIEW

NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED

Commissioner of Finance & Administration

1) RFS #	34401-11656	
2) Procuring Agency :	Department of Finance and Administration, Division of Intellectual Disabilities Services	
EXISTING CONTRACT INFORMATION		
3) Service Caption :	Outpatient Forensic Evaluations	
4) Contractor :	Behavior Science Consulting, PLLC	
5) Contract #	FA-06-16708-00	
6) Contract Start Date :	January 1, 2006	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	December 31, 2010	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 238,300.00	
PROPOSED AMENDMENT INFORMATION		
9) Amendment #	3	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	January 2, 2010	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	December 31, 2010	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 271,200.00	
13) Approval Criteria : (select one)	<input checked="checked" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :		
This amendment will increase the maximum liability amount and will add model language that is now required of new contracts pertaining to illegal immigrants and the State's voluntary buyout program.		
15) Explanation of Need for the Proposed Amendment :		
The utilization of this contract has increased beyond the anticipated amount and additional funding is necessary to pay for the necessary level of services.		
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)		
William L. Fulliton, Ph.D. Behavior Science Consulting, PLLC 100 North Main Street, Suite 2315 Memphis, Tennessee 38103		

17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)	
Documentation is ...	<input checked="" type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Attached to this Request
18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)	
Documentation is ...	<input checked="" type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Attached to this Request
19) Department of Human Resources Endorsement : (required for state employees training service)	
Documentation is ...	<input checked="" type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Attached to this Request
20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :	
The contract was awarded through the State's competitive/RFP process.	
21) Justification for the Proposed Non-Competitive Amendment :	
The level of services has increased and additional funding is needed for pay for those services. The contract was awarded competitively; the service description does not change and the rates will not increase from those originally proposed through the competitive process about four (4) years ago.	
AGENCY HEAD SIGNATURE & DATE : (must be signed & dated by the <u>ACTUAL</u> procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)	
SIGNATURE & DATE	



C O N T R A C T A M E N D M E N T

Agency Tracking # 34411-00656	Edison ID	Contract # FA-06-16708-00	Amendment # 3
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Contractor Behavior Science Consulting, PLLC	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 505-78-7266
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Amendment Purpose/ Effects Increase Maximum Liability Amount

Contract Begin Date 1/1/06	Contract End Date 12/31/10	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s)
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$5,600.00				\$5,600.00
2007	\$44,200.00				\$44,200.00
2008	\$59,070.00				\$59,070.00
2009	\$60,330.00				\$60,330.00
2010	\$68,000.00				\$68,000.00
2011	\$34,000.00				\$34,000.00
TOTAL:	\$271,200.00				\$271,200.00

American Recovery and Reinvestment Act (ARRA) Funding – ☐ YES ☒ NO

— COMPLETE FOR AMENDMENTS —			Agency Contact & Telephone # Debra Dunn 253-6812	
END DATE AMENDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) Melinda Lanza 253-3166	
2006	\$5,600.00	\$0.00		
2007	\$61,640.00	(\$17,440.00)		
2008	\$68,000.00	(\$8,930.00)		
2009	\$66,200.00	(\$5,870.00)		
2010	\$18,760.00	\$49,240.00		
2011	\$18,100.00	\$15,900.00	Speed Code	Account Code
TOTAL:	\$238,300.00	\$32,900.00		

— OCR USE —	Procurement Process Summary (non-competitive, FA- or ED-type only) This contract was competitively awarded through the State's RFP process
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**AMENDMENT THREE
TO FA-06-16708-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Division of Intellectual Disabilities Services, hereinafter referred to as the "State" and Behavior Science Consulting, PLLC, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section C.1. is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two hundred seventy one thousand, two hundred dollars (\$271,200.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

2. The following provision is added as Contract Section D.20.:

D.20. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Two, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

3. The following provision is added as Contract Section E.18.:

E.18. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

4. Contract Attachment Two attached hereto is added as a new Contract Attachment.

The revisions set forth herein shall be effective on the date of final approval by the appropriate State officials in accordance with applicable Tennessee State laws and regulations. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

BEHAVIOR SCIENCE CONSULTING, PLLC:

CONTRACTOR SIGNATURE

DATE

WILLIAM L. FULLITON, PH.D.

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

**DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF INTELLECTUAL DISABILITIES SERVICES:**

M. D. GOETZ, JR., COMMISSIONER

DATE

ATTACHMENT TWO

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Behavior Science Consulting, PLLC
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	505-78-7266

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

CONTRACT SUMMARY SHEET

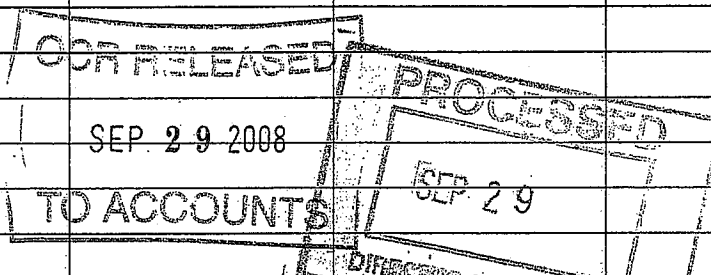
AMENDMENT 01/1908

RFS #	Contract #
344 . 11 — 656 — 06	FA-06-16708-02
State Agency	State Agency Division
Department of Finance and Administration	Division of Mental Retardation Services
Contractor Name	Contractor ID # (FEIN or SSN)
Behavior Science Consulting PLLC	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 505-78-7266

Service Description			
Outpatient Forensic Evaluations			
Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
1/1/06	12/31/10	Vendor	

Mark Each TRUE Statement	
<input checked="" type="checkbox"/> Contractor is on STARS	<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
344.11	80008	083	11		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$5,600.00				\$5,600.00
2007	\$61,640.00				\$61,640.00
2008	\$68,000.00				\$68,000.00
2009	\$66,200.00				\$66,200.00
2010	\$18,760.00				\$18,760.00
2011	\$18,100.00				\$18,100.00
TOTAL	\$238,300.00				\$238,300.00



COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Melinda Lanza 253-3166
2006	\$5,600.00		State Agency Budget Officer Approval
2007	\$61,640.00		
2008	\$68,000.00		
2009	\$36,200.00	\$30,000.00	
2010	\$18,760.00		
2011	\$18,100.00		
TOTAL	\$208,300.00	\$30,000.00	
End Date	12/31/10	12/31/10	

Contractor Ownership (complete for ALL base contracts — N/A to amendments or delegated authorities)					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> .NOT Minority/Disadvantaged	<input type="checkbox"/> Other	
Contractor Selection Method (complete for ALL base contracts — N/A to amendments or delegated authorities)					
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *			
<input type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)		<input type="checkbox"/> Other *		

Procurement Process Summary (complete for Selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)
<p style="transform: rotate(180deg); font-weight: bold; font-size: 1.2em;">RECEIVED</p> <p style="transform: rotate(180deg); font-weight: bold; font-size: 0.8em;">2008 SEP 23 AM 10:41</p>

**AMENDMENT TWO
TO FA-06-16708-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, hereinafter referred to as the "State" or "DMRS" and Behavioral Science Consulting, PLLC, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section C.1. is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two hundred thirty-eight thousand, three hundred dollars (\$238,300.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

The revisions set forth herein shall be effective August 15, 2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

BEHAVIORAL SCIENCE CONSULTING, PLLC



CONTRACTOR SIGNATURE

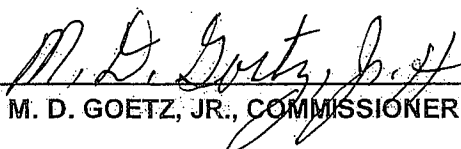


DATE

WILLIAM L. FULLITON, PH.D.

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

**DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF MENTAL RETARDATION SERVICES:**



M. D. GOETZ, JR., COMMISSIONER



DATE

APPROVED:

M. D. Goetz, Jr. /agl 9-22-08
M. D. GOETZ, JR., COMMISSIONER DATE
DEPARTMENT OF FINANCE AND ADMINISTRATION

John G. Morgan 9/25/08
JOHN G. MORGAN, COMPTROLLER OF THE TREASURY DATE

CONTRACT SUMMARY SHEET

AMENDMENT 021908

RFS #		Contract #	
344 . 11 — 656 — 06		FA-06-16708-01	
State Agency		State Agency Division	
Department of Finance and Administration		Division of Mental Retardation Services	
Contractor Name		Contractor ID # (FEIN or SSN)	
Behavior Science Consulting PLLC		<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 505-78-7266	

Service Description			
Outpatient Forensic Evaluations			
Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
1/1/06	12/13/10	Vendor	

Mark Each TRUE Statement					
<input checked="" type="checkbox"/> Contractor is on STARS			<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts		
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
344.11	80008	083	11		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$5,600.00				\$5,600.00
2007	\$61,640.00				\$61,640.00
2008	\$68,000.00				\$68,000.00
2009	\$36,200.00				\$36,200.00
2010	\$18,760.00				\$18,760.00
2011	\$18,100.00				\$18,100.00
TOTAL	\$208,300.00				\$208,300.00

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Melinda Lanza 253-3166	
2006	\$5,600.00		State Agency Budget Officer Approval <div style="font-family: cursive; font-size: 1.5em; text-align: center;">Melinda Lanza 5/5/08</div>	
2007	\$61,640.00			
2008	\$34,700.00	\$33,300.00		
2009	\$36,200.00			
2010	\$18,760.00			
2011	\$18,100.00			
TOTAL	\$175,000.00	\$33,300.00	Funding Certification (certification required by T.C.A. § 9-4-511(a) that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
End Date	12/31/10	12/31/10		

Contractor Ownership (complete for ALL base contracts — N/A to amendments or delegated authorities)					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> Government	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> NOT Minority/Disadvantaged*	<input type="checkbox"/> Other	

Contractor Selection Method (complete for ALL base contracts — N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *	
<input type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)	<input type="checkbox"/> Other *	

Procurement Process Summary (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)	
	<div style="border: 1px solid black; padding: 5px; display: inline-block;"> RECEIVED MAY 29 2008 </div>

**AMENDMENT ONE
TO FA-06-16708-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, hereinafter referred to as the "State" or "DMRS" and Behavioral Science Consulting, PLLC, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section C.1. is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two hundred eight thousand, three hundred dollars (\$208,300.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

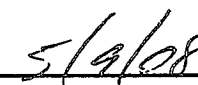
The revisions set forth herein shall be effective April 30, 2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

BEHAVIORAL SCIENCE CONSULTING, PLLC



CONTRACTOR SIGNATURE




DATE

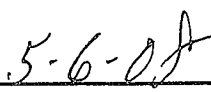
WILLIAM L. FULLITON, PH.D.

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

**DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF MENTAL RETARDATION SERVICES:**



M. D. GOETZ, JR., COMMISSIONER



DATE

APPROVED:

M. D. Goetz, Jr. / sc

5/30/08

M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

John G. Morgan

6/3/08

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

CONTRACT SUMMARY SHEET

021406

RFS #		Contract #	
344.11-656		FA-06-16708-00	
State Agency		State Agency Division	
Department of Finance and Administration		Division of Mental Retardation Services	
Contractor Name		Contractor ID # (FEIN or SSN)	
Behavior Science Consulting PLLC		C- or X V- 505-78-7266	
Service Description			
Outpatient Forensic Evaluations			
Contract BEGIN Date	Contract END Date	Subrecipient or Vendor?	CFDA #
1/1/06	12/31/10	Vendor	
Mark Each TRUE Statement			
<input checked="" type="checkbox"/> Contractor is on STARS		<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts	
Allotment Code	Cost Center	Object Code	Fund
344.11	80008	083	11
FY	State	Federal	Interdepartmental
2006	\$ 5,600.00		
2007	\$ 61,640.00		
2008	\$ 34,700.00		
2009	\$ 36,200.00		
2010	\$ 18,760.00		
2011	\$ 18,100.00		
TOTAL	\$ 175,000.00	\$ -	\$ -
Funding Grant Code		Funding Subgrant Code	
TOTAL Contract Amount		\$ 175,000.00	
FY		Base Contract & Prior Amendments	
2006		\$ 16,600.00	
2007		\$ 33,200.00	
2008		\$ 34,700.00	
2009		\$ 36,200.00	
2010		\$ 36,200.00	
2011		\$ 18,100.00	
TOTAL		\$ 175,000.00	
THIS Amendment ONLY		State Agency Fiscal Contact & Telephone #	
(11,000.00)		Melinda Lanza 253-3166	
28,440.00		State Agency Budget Officer Approval	
(17,440.00)		Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
-			
12/31/2010		12/31/2010	
Contractor Ownership (complete only for base contracts with contract # prefix FA or GR)			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> NOT disadvantaged
<input type="checkbox"/> OTHER minority/disadvantaged—			
Contractor Selection Method (complete for ALL base contracts—N/A to amendments or delegated authorities)			
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method	
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (eg, ID, GG, GU)	<input type="checkbox"/> Other	
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)			

CONTRACT SUMMARY SHEET

8-8-05

RFS #				Contract #			
344.11-656				FA-06-16708-00			
State Agency				State Agency Division			
Department of Finance and Administration				Division of Mental Retardation Services			
Contractor Name				Contractor ID # (FEIN or SSN)			
Behavioral Science Consulting, PLLC				C- or <input checked="" type="checkbox"/> V- 505-78-7266			
Service Description							
Outpatient Forensic Evaluations							
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?		CFDA #	
1-Jan-06		31-Dec-10		Vendor			
Mark if Statement is TRUE							
<input checked="" type="checkbox"/> Contractor is on STARS as required				<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts as required			
Allotment Code		Cost Center		Object Code		Fund	
344.11		80008		83		11	
Funding Grant Code		Funding Subgrant Code		Funding Grant Code		Funding Subgrant Code	
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2006	\$ 16,600.00				\$ 16,600.00		
2007	\$ 33,200.00				\$ 33,200.00		
2008	\$ 34,700.00				\$ 34,700.00		
2009	\$ 36,200.00				\$ 36,200.00		
2010	\$ 36,200.00				\$ 36,200.00		
2011	\$ 18,100.00				\$ 18,100.00		
TOTAL	\$ 175,000.00	\$ -	\$ -	\$ -	\$ 175,000.00		
COMPLETE FOR AMENDMENTS ONLY				State Agency Fiscal Contact & Telephone #			
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Melinda Lanza 253-3166				
			State Agency Budget Officer Approval				
			Melinda Lanza 1/5/06				
			Funding Certification (certification required by F.C.A. § 9-4-5113 that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)				
TOTAL	\$ -	\$ -					
End Date							
Contractor Ownership							
<input type="checkbox"/> African American		<input type="checkbox"/> Disabled		<input type="checkbox"/> Hispanic		<input type="checkbox"/> Small Business	
<input type="checkbox"/> Asian		<input type="checkbox"/> Female		<input type="checkbox"/> Native American		<input type="checkbox"/> NOT minority/disadvantaged	
						OTHER minority/disadvantaged—	
Contractor Selection Method							
<input checked="" type="checkbox"/> RFP		<input type="checkbox"/> Competitive Negotiation		<input type="checkbox"/> Alternative Procurement Method			
<input type="checkbox"/> Non-Competitive Negotiation		<input type="checkbox"/> Government		<input type="checkbox"/> Other			
Procurement Process Summary							
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: left;"> <p>RFP process</p> <p style="border: 1px solid black; padding: 5px; transform: rotate(-15deg);">MAR - 7 2008</p> <p>DIRECTOR OF ACCOUNTS</p> </div> <div style="text-align: right;"> <p>RECEIVED</p> <p>2006 FEB 27 PM 12:48</p> </div> </div>							

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF MENTAL RETARDATION SERVICES
AND
BEHAVIORAL SCIENCE CONSULTING, PLLC**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, hereinafter referred to as the "State" or "DMRS" and Behavioral Science Consulting, PLLC, hereinafter referred to as the "Contractor", is for the provision of Comprehensive Forensic Evaluation, Competency Training, and Court Testimony for individuals served through the West Tennessee Regional Office, located at 8383 Wold Lake Drive, Bartlett, Tennessee 38133, as further defined in the "SCOPE OF SERVICES":

The Contractor is a limited liability company. The Contractor's address is:

100 North Main Street, Suite 2315
Memphis, Tennessee 38103

The Contractor's place of incorporation or organization is Tennessee.

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide Comprehensive Forensic Evaluations (Type I and Type II) to mentally retarded adult and juvenile defendants for determination of competency.
- a. The following content areas shall be incorporated in the development of a competency evaluation.
1. Source of referral and reiteration of the referral question(s);
 2. Date and place of the evaluation, and time spent for the preparation of the report;
 3. Statement of limited confidentiality;
 4. List of reference materials and of interviews utilized in the preparation of the report;
 5. Case law and/or statutory requirement(s) to meet the criteria for competency to stand trial.
 6. Pertinent historical information of the defendant;
 7. Pertinent psychiatric, medical, criminal, and substance abuse history;
 8. Diagnostic impression: Thorough Mental Status Exam and current deficits in adaptive levels of functioning and mental retardation (prior to age 18);
 9. Evaluation of the defendant's ability to understand the proceedings against him/her;
 10. Statements of the defendant that demonstrate the extent of his/her understanding of relevant issues are provided in quotations. This part of the report would provide answers to whether the defendant has the ability to:

- i. understand his/her present charges,
 - ii. understand his/her overall legal situation,
 - iii. understand the roles of various courtroom personnel,
 - iv. understand various pleas and appreciate the consequences of those pleas,
 - v. understand the range of possible verdicts;
- 11. Assessment of the defendant's ability to assist in his/her defense. This part of the evaluation should reflect on defendant's ability to:
 - i. recount his/her behavior and whereabouts at the time of the alleged offense;
 - ii. effectively interact with his/her attorney; and
 - iii. behave in an acceptable manner in the court room and understand the consequences of failure to conform his/her behavior when court is in session;
- 12. The Evaluator shall use standardized and objective instruments that offer valid and reliable data to support or refute the position that the defendant is malingering. The justification for the diagnosis of malingering must be well supported by observation, history, and objective data.
- 13. Evaluators will respond to evaluation referrals in a timely manner and produce a draft report to the Outpatient Forensic Director for review and consultation within seven (7) business days after initial contact with a defendant. A final evaluation report must be submitted within fourteen (14) business days to the Outpatient Forensic Director. Extenuating circumstances must be documented and submitted as to why the required time frames can/could not be met. The Evaluator shall also stipulate a target date to complete the evaluation.
- b. The Contractor shall comply with the forensic evaluation referral process formalized by the Department of Finance and Administration Division of Mental Retardation Services (DMRS) and the Tennessee Department of Mental Health Developmental Disabilities (TDMHDD). The Harold Jordan Center (HJC) Outpatient Forensic Director shall train the Contractor(s) staff on the referral process. Forensic evaluators shall communicate and/or coordinate service activities with the Regional Mental Health Institute and/or Regional Mental Health Center's forensic contact. The Evaluator must contact the referring party within three (3) business days.
- c. The Contractor shall, when deemed necessary, complete a certificate for involuntary commitment per T.C.A. 33-5-403. Prior to the certificate of commitment being forwarded to the referring agency, the Outpatient Forensic Director will be notified. The Outpatient Forensic Director and DMRS General Counsel will review the certificate of commitment prior to submission.
- d. Forensic Evaluators shall administratively report to the Harold Jordan Center Outpatient Forensic Director located at the Harold Jordan Center. The Outpatient Forensic Director will monitor, assist in coordination of required services, and will consult with the forensic evaluators as needed.
- e. Forensic Evaluators shall utilize the TDMHDD "endorsed" Competency Assessment Instrument (CAI) or another equivalent competency-based word instrument that are well regarded to access the domain of competence or fitness to stand trial, i.e., Georgia Competency Test, McGarry Competency Scale, etc.

- f. Although historical information is typically made available to the evaluators, evaluators should be knowledgeable in a wide range of assessment instruments to adequately address referral question(s), explore pathologies and provide recommendations. Assessment instruments to be utilized must be standardized, valid, and reliable, and shall consist of, but are not limited to:
1. Weschler Adult Intelligence Scale – III
 2. Weschler Intelligence Scale for children – III
 3. Wechsler Abbreviated Intelligence Scale
 4. Beta III
 5. TONI (Test of Non-verbal Intelligence)
 6. Weschler Memory Scale Revised (Organic Brain Syndrome)
 7. Jacobs Cognitive Screening Test (Organic Brain Syndrome)
 8. WAIS-R (Organic Brain Syndrome)
 9. Rogers Criminal Responsibility Scale
 10. When considering risk concerns for violent defendants, the evaluator may utilize additional assessment resources, i.e., Static-99, MSI, etc.
- g. Reports shall be prepared using word or excel as appropriate for the type of information stored; other software programs may be used upon DMRS approval. The design of reports must meet DMRS approval. Reports shall be stored on disk and submitted quarterly to the HJC Outpatient Forensic Director for historical reference, data collection, etc. The Contractor shall maintain backup copies of all documents generated for each defendant for the term of this contract. All hard copies shall be secured at the vendor's professional place of practice. All raw data shall be forwarded to the Forensic Coordinator located at the Harold Jordan Center by the last week of each fiscal year. Other forensic documentation shall be destroyed prior to the start of each fiscal year.
- h. An Evaluator shall not initiate a forensic evaluation when there has been a patient-treatment provider relationship.
- i. Evaluators shall participate in a one-day orientation/training activity located at the Harold Jordan Center. Materials will be provided by TDMHDD during the training event.
- j. Evaluators shall follow protocols established by the TDMHDD.
- k. Each evaluator will ensure that service continuity and competent representation is made available for each defendant. Evaluators shall notify the Outpatient Forensic Director in a timely manner during periods of vacation, prolonged emergency circumstances, or are no longer intending to provide services.
- l. Evaluators will provide services that reflect the current standards of psychological practice, Tennessee law, and TDMHDD policy and procedure.

- A.2. The Contractor shall provide Outpatient Competency Training to those defendants requiring such. A certified forensic evaluator shall supervise competency training when provided by a licensed mental health professional.
- a. Competency training sessions shall not exceed a two-year period. Competency training sessions are limited to twenty-four (24) sessions within a six (6) month period. Competency based training sessions are predicated on thirty (30) or sixty (60) minute sessions. The frequency of training sessions will usually be one to two times per week but may occur more frequently as deemed appropriate by the provider based upon the defendants' abilities.
 - b. Authorization from TDMHDD, Forensic Services, must be obtained prior to performing competency training sessions. The HJC Outpatient Forensic Director will assist evaluators in securing authorization.
 - c. The Contractor shall submit a written report to the court every six months (or at any time the defendant becomes competent) and shall provide a copy to TDMHDD, Forensic Services, and the HJC Outpatient Forensic Director.
 - d. The Contractor shall maintain a clinical file on each defendant that documents competency training and maintenance services provided. All documents associated with a defendant shall be considered the property of DMRS and upon request, shall be submitted to the Outpatient Forensic Director (HJC).
- A.3. The Contractor shall provide on-site Courtroom Expert Testimony:
- a. If subpoenaed, the forensic evaluators shall provide expert testimony related to the forensic evaluation completed. The Outpatient Forensic Director shall be notified immediately when a subpoena for testimony has been issued to the Contractor. The Outpatient Forensic Director will notify the DMRS General Counsel that the Contractor has received the subpoena.
- A.4. Target Performance Outcomes and Compliance Expectations:
- a. Completed evaluations address the court ordered referral question(s) and are completed in a thorough and professional manner.
 - b. Evaluators shall meet the certification and training requirements established by TDMHDD/DMRS.
 - c. Evaluators are to complete required evaluations within specified periods.
 - d. Forensic professionals shall provide competency-based training within specified periods.
 - e. Evaluators are to complete, when applicable, six-month written reports to the court.
- A.5. Minimum Qualification of Contractor's staff:
- a. Evaluators will be doctoral level psychologists licensed in Tennessee as Health Service Providers and will be required to complete a one-day forensic certification training session. Forensic evaluators shall participate in annual renewal certification training.
 - b. The Contractor shall ensure a valid license is provided to the HJC Outpatient Forensic Director for each evaluator that provides services under this contract prior to the evaluator's performance of any services under this Contract. The Contractor shall ensure license renewals are submitted to the HJC Outpatient Forensic Director in a timely manner as to ensure a valid license is available before the evaluator's current license expires.

B. CONTRACT TERM:

- B.1. Contract Term. This Contract shall be effective for the period commencing on January 1, 2006 and ending on December 31, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed one hundred seventy-five thousand dollars (\$175,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the Service Rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The Service Rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the Service Rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>SERVICE UNIT/MILESTONE</u>	Year 1 01/01/06 - 12/31/06	Year 2 01/01/07 - 12/31/07	Year 3 01/01/08 - 12/31/08	Year 4 01/01/09 - 12/31/09	Year 5 01/01/10 - 12/31/10
Comprehensive Forensic Evaluation Type I (per evaluation)	\$800.00	\$800.00	\$880.00	\$880.00	\$880.00
Comprehensive Forensic Evaluation Type II (per evaluation)	\$400.00	\$400.00	\$440.00	\$440.00	\$440.00
Competency Training (per group session)	\$120.00	\$120.00	\$130.00	\$130.00	\$130.00
Courtroom Testimony (per hourly rate)	\$120.00	\$120.00	\$130.00	\$130.00	\$130.00

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither

be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under **Tennessee Code Annotated**, Sections 9-8-101 through 9-8-407.

- D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Stephen H. Norrris, Deputy Commissioner
Department of Finance and Administration
Division of Mental Retardation Services
500 Deaderick Street
Nashville, Tennessee 37243
Telephone Number 615-532-6538
Facsimile Number 615-532-9940

The Contractor:

William L. Fulliton, Ph.D.
Behavioral Science Consulting, PLLC
100 North Main Street, Suite 2315
Memphis, Tennessee 38103
Telephone Number (901) 681-0851
Facsimile Number (901) 681-0872

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach".

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor, as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment One and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to

cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken

- (4) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

- E.5. **Annual Report and Audit.** The Contractor shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Contractor that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Contractor may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Contractor shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Contractor shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

- E.6. **State Ownership of Work Products.** The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited

rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

E.7. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.8. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.11. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering

the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.12. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.13. Date/Time Hold Harmless. As required by **Tennessee Code Annotated**, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.14. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by **Tennessee Code Annotated**, Section 8-6-106.

E.15. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in **Tennessee Code Annotated**, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System, provides that if a retired member returns to State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

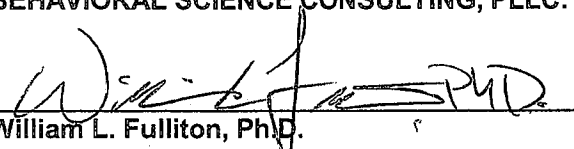
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.17. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

IN WITNESS WHEREOF:

BEHAVIORAL SCIENCE CONSULTING, PLLC:

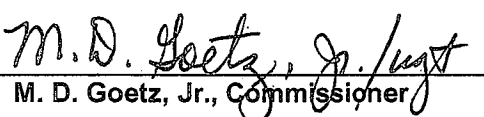
 2/3/06
William L. Fulliton, PhD. Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF MENTAL RETARDATION SERVICES:

 1-9-06
M. D. Goetz, Jr., Commissioner Date

APPROVED:


DEPARTMENT OF FINANCE AND ADMINISTRATION:

 2/24/06
M. D. Goetz, Jr., Commissioner Date

DEPARTMENT OF PERSONNEL:

NOT APPLICABLE
Randy C. Camp, Commissioner Date

COMPTROLLER OF THE TREASURY:

 3-2-06
John G. Morgan, Comptroller of the Treasury Date

ATTACHMENT ONE

1. Late, Incorrect, or Deficient Services

The Contractor shall be liable to the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services for liquidated damages of one hundred dollars (\$100.00) per business day for each evaluation or report that is late, incorrect, or deficient. Liquidated damages for late evaluations or reports shall begin on the first day that the report is late. Liquidated damages for deficient evaluations or reports shall begin on the eleventh calendar day after notice is provided from the State to the Contractor that the report remains incomplete or the deliverables remain deficient; provided, however, that it is reasonable to correct the report or deliverable within ten (10) calendar days. For the purposes of determining liquidated damages in accordance with this Section of the Attachment, evaluations or reports are due in accordance with the following schedule, unless otherwise specified elsewhere in this Contract.

<u>DELIVERABLES</u>	<u>DATE AGREED UPON BY THE PARTIES</u>
Late evaluation or report	Five (5) calendar days after request from the Harold Jordan Center (HJC) Outpatient Forensic Director
Deficient evaluation or report	Twenty (20) calendar days after request from the Harold Jordan Center (HJC) Outpatient Forensic Director

2. Failure to Provide Competency based training

The Contractor shall be liable to the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services for liquidated damages of one-hundred dollars (\$100.00) per each occurrence per business day that competency-based training is late.

3. Failure to Meet Training Requirements

The Contractor shall be liable to the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services for liquidated damages of one-hundred dollars (\$100.00) per each occurrence per business day that certification and training requirements are late.